

Protecting Migrant Children: In Search of Best Practice. Edited by Mary Crock and Lenni B. Benson. Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2018. Pp. xxv, 552. ISBN: 978-1-78643-025-0. US\$205.00; UK£135.00.

Protecting Migrant Children a gripping series of twenty-four essays written by a number of international immigration experts. It includes a chapter-by-chapter discussion of child migrants and the innumerable legal and social struggles they face. Focusing on the 1989 United Nations Convention on the Rights of the Child (CRC), this book examines child immigration from a significant variety of perspectives.

The compelling Foreword is written by Yanghee Lee, a CRC expert. It lays out the four underlying principles of the CRC: “non-discrimination (Article 2); best interests of the child (Article 3); life, survival and development (Article 6); and respect for the views of the child (Article 12).” The preface frames these principles as the basis from which the contributors focus their essays and sets the tone for the book.

The preface is followed by an invaluable abbreviation list of international tribunals, treatises, organizations, and more, as well as an informative and attention-grabbing Foreword from the editors. As the book is filled with dozens of abbreviations, for non-experts in the field the abbreviation list is instrumental in following many of the concepts found throughout the essays. Following the Abbreviation Table, the Preface seamlessly immerses the readers into the organization and focus of the substantive chapters.

These essays offer a truly poignant look at the plight of migrant children throughout the world. They include many helpful and hard-hitting statistics on these children, their migration location, their age and status, and other significant facts. Several chapters focus on the motivations of child immigration and provide real-world examples of children and their often-horrifying plights. A number of chapters are particularly timely given current immigration debate in the United States, including chapter 9, “Defending migrant children and youth in the inter-American system”; chapter 13, “The legal treatment of immigrant children in the United States”; chapter 14, “Children and refugee law in Australia and the United States”; and chapter 17, “Procedure deficits in protection for immigrant children in the United States”; although, given recent legal changes in the country they may no longer be entirely accurate. Perhaps most relevant today, Part V of the book consists of three chapters discussing children and immigration detention. Additionally, Chapter 12, *Protecting migrant children in the United Kingdom*, provides a timely discussion of the implications of Brexit on child immigration to the United Kingdom. The book concludes with several chapters discussing challenges and solutions faced in addressing child immigration.

Portions of this book are a bit repetitive; unsurprising given the predominant focus on the CRC, but each chapter stands alone as an informative and in-depth analysis of child immigration in various forms and from numerous global locations. Particularly for those currently working on articles focused on child immigration, the wealth of detailed information on specific international regions in this book would be invaluable. These essays are truly compelling and effective in bringing the many issues of child immigration to light and are informative for novice and expert readers alike.

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Using Human Rights to Counter Terrorism. Edited by Manfred Nowak and Anne Charbord. Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2018. Pp. x, 371. ISBN: 978-1-78471-526-7. US\$165.00; UK £110.00.

In a statement to a Special Meeting of the Counter-Terrorism Committee with Regional Organizations on March 6, 2003, then Secretary General of the United Nations Kofi Annan stated:

Terrorist acts, particularly those involving the loss of life, constitute grave violations of human rights. Our responses to terrorism, as well as our efforts to thwart it and prevent it should uphold the human rights that

terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism –not privileges to be sacrificed at a time of tension.¹

It is this premise that forms the basis of a new collection of eight essays by eminent human rights scholars and national security experts entitled *Using Human Rights to Counter Terrorism*, published by Edward Elgar in their *Elgar Studies in Human Rights* series.

Regrettably, despite Secretary General Annan's admonition following the shocking terrorist attack of September 11, 2001 and others perpetrated throughout the world in its wake, state practice has shown a consistent tendency among nations to diminish fundamental rights guarantees and to silo national security measures from the reach of international humanitarian and human rights law, or to simply ignore the international rule of law completely. Given that such terms as "black sites," "extraordinary rendition," and "waterboarding" have entered the popular lexicon of the debate regarding how best to balance freedom and security, the adoption of such draconian measures to protect the populace at the expense of human rights is the prevailing order of the day.

The scope and breadth of these developments is most clearly demonstrated in the first chapter by Manfred Nowak and Anne Charbord. It serves as a primer to the key trends in the fight against terrorism as they relate to international human rights law. The United States' actions in their declared "war against terror" versus Taliban and Al-Qaida forces offer an illustrative microcosm of negative state practice that severely tests the international human rights system in the post 9/11 world. The United States' efforts to try defendants by special military tribunals and disingenuous legal arguments that justify violation of *jus cogens* norms against torture are just a few of the previously unthinkable policy choices utilized as counterterrorism measures that have been readily followed and abetted by other nations. Indeed, the employment of extraterritorial detention of suspected terrorists to curtail human rights protections for detainees continues to this day at Guantanamo. For ordinary citizens, other measures such as mass surveillance programs have eroded privacy rights, and legislation imposed to limit terrorist financing has made it difficult for NGOs to solicit funds necessary to work in war-torn regions plagued by war and unrest. With a thumb on the scale of choosing the most expedient methods for combatting terrorism at the cost of upholding human rights, the international community has not engaged in an honest debate on how best to tackle the scourge of terrorism. Any suggestion of a nuanced human rights based approach is met promptly with a charge of being "soft" on terrorism.

Martin Scheinin's chapter focuses on the United Nations' flawed initial response to the threat of global terrorism after 9/11. Immediately after that attack, the Security Council adopted Resolution 1368,² which declared terrorism a threat to international peace and security and proclaimed "its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter."³ Shortly thereafter, the Council adopted Resolution 1373⁴ under its Chapter VII powers, which required member states to implement existing terrorism conventions and work to prohibit the funding and support of terrorism by freezing assets of those found to be supporting terrorism.⁵ The Security Council's initial efforts were hobbled by a lack of a binding definition of terrorism and the criticism that the Council was "legislating" outside of the confines of an armed conflict, a task that many members not sitting on the Council felt was strictly the purview of the General Assembly. Perhaps the most glaring omission was the absence of any language that the fight against terrorism should be synthesized within the international human rights framework. It was not until the adoption of the UN Global Counter-Terrorism Strategy and Plan of Action in 2006 that the UN realigned its efforts to work within that framework.⁶ Unfortunately, the subsequent efforts of the Security Council and its Counter-Terrorism Committee and other newly created bodies such as the UN Counter-Terrorism Implementation Task Force have not fully succeeded in undoing the considerable damage to the international human rights system that national legislation adopted in response to resolution 1373 had wrought.

¹ Secretary-General's Statement at the Special Meeting of the Counter-Terrorism Committee with Regional Organizations (March 6, 2003), <https://www.un.org/sg/en/content/sg/statement/2003-03-06/secretary-generals-statement-special-meeting-counter-terrorism>

² S.C. Res. 1368 (Sept. 12, 2001).

³ *Id.*

⁴ S.C. Res. 1373 (Sept. 28, 2001).

⁵ *Id.*

⁶ G.A. Res. 60/288 (Sept. 20, 2006).

Of particular interest is Fionnuala ní Aoláin's chapter on the complexity and challenges of addressing the conditions that spawn terrorism. Perhaps the greatest challenge to understanding the causes of terrorism is the lack of definitional clarity that precludes efforts to disaggregate terrorism from other forms of violence, which "operates to shut down conversations about legitimate uses of force by non-state actors in the context of wars of national liberation, occupation, and armed conflicts falling within the protective mandate of the 1977 Protocol Additional to the Geneva Conventions of 1949."⁷ Thus, past practice by states painting "terrorism" with a broad brush precludes candid debate regarding the relationship between terrorism and legitimate self-determination. When the term is liberally used to describe moderate opposition groups seeking recognition within a state, it produces legal "black holes," which foster "conceptual and practical fuzziness around the obligations and limitations of states when addressing politically motivated violence."⁸

Despite the great deal of scholarly focus on identifying the conditions conducive to terrorism at the macro level, which include such factors as socio-economic and political exclusion, poverty, and persistent armed conflict, much work needs to be done on developing a more granular understanding of the interrelationships between environments facilitating terrorism (failed states for example), the motivating causes behind it (persistent conflicts and historical injustices), and the triggering events that give rise to such acts. While the international response to terrorism such as in the UN Global Counter-Terrorism Strategy identifies macro causes and points to key UN agencies equipped to develop preventative strategies, the solutions are ultimately implemented at the national level. As has been clear from conflicts in Yemen and Syria, the international community has not shown an appetite or will to demand the necessary economic and political structural transformation necessary to rehabilitate repressive regimes or failed states that have been mired in conflict. Until that will emerges, the international community will be locked into an endless cycle of more coercive and suppressive responses that seek immediate results rather than a system that utilizes preventative and long-term measures in its arsenal to fight terrorism.⁹

Finally, the author suggests that a feminist engagement with the causes, effects, and results of terrorism is long overdue. While there has been significant scholarly interest in studying female combatants as a sociological phenomenon, they have primarily been viewed as outliers. The legal discourse has placed its attention firmly on men as the primary actors. As the author states, little attention has been paid to the "gendered contexts, practices and intersectionalities that give profound insight into the conditions that produce and sustain terrorism."¹⁰ Of particular interest to the author is the idea of "hyper" masculinity.¹¹ She posits that in an environment of conflict, poverty, and social decay, hypermasculinity plays an outsized role in fomenting acts that prey on vulnerable populations and foster radicalization and violent mobilization across international borders. For men who are experiencing the loss of economic and social status normally afforded to them in male gender hierarchies, participation in radical and extremist movements offers an easy avenue to regain stature in such a society. Ultimately, the road forward is difficult and will require an "understanding of gender codes, gender equality and gender identity" in constructing systems of rehabilitation and prevention.¹²

Later chapters tackle issues relating to the Security Council resolution 2178 regarding "foreign terrorist fighters" and its impact on international human rights and humanitarian law, the human rights obligations of states and their influence on intelligence gathering, and the human rights implications of the use of a preventive criminal justice strategy against terrorism. The final chapter by Lisa N. Oldring ties all the issues presented in this collection together by examining the question of accountability for the counterterrorism programs of states. While nations have actively identified and pursued terrorist groups and individuals throughout the globe, they have been less vigilant in ensuring accountability for their citizens committing human rights violations as a result of these actions. States have a dual obligation to both pursue and punish terrorist activity while ensuring that legislative acts defining and punishing terrorism adhere to established international and domestic norms protecting human rights. While UN members have committed to respecting human rights and the rule of law in their counterterrorism

⁷ Fionnuala ní Aoláin, *The Complexity and Challenges of Addressing the Conditions Conducive to Terrorism in Using Human Rights to Counter Terrorism* 166, 169 (Manfred Nowak & Anne Charboard, eds., 2018).

⁸ *Id.*

⁹ *Id.* at 181.

¹⁰ *Id.* at 185.

¹¹ *Id.* at 188.

¹² *Id.* at 192.

efforts through the Global Counter-Terrorism Strategy, such aspirations have not been fully realized in the national security activities of states.

Challenges to accountability for international law violations in the counter-terror field, as noted earlier, can be found in the wave of national legislation adopted in the wake of Security Council resolution 1373 that allowed states to adopt domestic measures against terrorism without an explicit obligation to comply with established human rights standards. The resulting legislation defining and punishing terrorist activity and support lacked sufficient definitional precision and legal certainty, which created an avenue for executive agencies and law enforcement bodies to employ wide ranging, nearly unfettered power to detain and prosecute suspected terrorists. Working in tandem, the expansion and consolidation of executive powers in the post-9/11 world, particularly as they relate to intelligence services, created a penumbra of secrecy that shielded human rights violators from accountability. This impunity creates a positive feedback loop that generates new violations as past acts go unpunished. The author suggests that upholding the rule of law in the counterterrorism arena “can also contribute as a deterrent to prevent new violations, uphold the rule of law and secure public trust in the justice system, through investment in institutions and processes that are accountable, effective and legitimate.”¹³

Oldring argues that the absence of accountability undermines the efficacy of counter-terror programs by generating powerful recruiting propaganda for extremist groups to exploit throughout the world. In order to foster an environment of accountability, states must have mechanisms in place that effectively prevent violations of international norms and sanction them as they occur. They should provide for an impartial and transparent investigation of the incident and if a violation is confirmed, states should offer effective due process safeguards and remedies to redress the harm sustained. Protections must then be put in place which prevent future violations from occurring. Because a large percentage of violations occur under the cover of intelligence activities, it is imperative that the intelligence community be given a clear mission that is stringently overseen through vigorous review mechanisms. Admittedly, examples of accountability in this context are rare. Perhaps the best example lies in the case of Maher Arar who was detained in New York at JFK airport and secretly rendered to Syria where he was tortured and held for 10 months without charge. The Canadian government established a Commission of Inquiry that thoroughly and impartially investigated the incident and ultimately provided compensation to the victim for their complicity. This incident offers an excellent example of how a robust system of accountability and adherence to human rights standards can operate without adverse effect to counterterror efforts. As nations and international organizations begin to take a longer view of their counterterrorism strategies, consensus is slowly emerging among states that upholding international human rights norms in the fight against terrorism is instrumental in achieving national security objectives.

Using Human Rights to Counter Terrorism is perhaps the most wide-ranging one volume examination of the symbiotic relationship between protecting international human rights norms and crafting effective strategies to counter the threat of terrorism. It makes a compelling argument that states need not abandon international human rights standards, but rather they are an invaluable, complementary weapon in defeating this existential threat to international peace and security. This volume is an essential addition to any serious research collection of human rights and national security law, and its publication will hopefully encourage further study regarding these synergies among international law scholars, national security experts, and practitioners in the field.

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¹³ Lisa N. Oldring, *Questions of Accountability in Countering Terrorism in USING HUMAN RIGHTS TO COUNTER TERRORISM* 300, 306 (Manfred Nowak & Anne Charboard, eds., 2018).